

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

July 10, 2006

Dear Xxxxx:

This letter is in response to your letter dated December 15, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I represent a STATE based Software Company that tracks Banking/Lending information for the automobile Leasing/Purchase industry. I am requesting any help you can provide me in acquiring tax information regarding automobile leases / purchases in your state. Here are some questions and examples....

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- 1.) Does *positive equity* used as a down payment to reduce the Selling Price subject to tax?
 - 2.) Does *positive equity* used to pay off the upfront fees (inception fees) subject to tax? (*)

Example:

Customer A goes into a dealership and wants to lease a \$20,000 vehicle. They have a car they are going to use as a trade-in that has a lien payoff of \$10,000. The dealer gives them \$12,000 for it. They now have a *positive equity* of \$2,000 that they can use as a down payment (capitalized cost reduction) is the \$2000 *positive equity* taxable or not?

*If the customer has \$500 upfront fees (inception fees) and uses part of the \$2000 positive equity to pay that off. Would the full \$2000 or just the remaining \$1500 be taxed?

What if the vehicle traded in is not owned by the customer (vehicle is still under a lease contract). Do the same answers apply?

3.) Does *negative equity* added to the selling price subject to tax?

Example.

Customer A goes into a dealership and wants to lease a \$20,000 vehicle. They have a car they are going to use as a trade-in that has a lien payoff of \$10,000. The dealer gives them \$8,000 for it. They now have a *negative equity* of \$2,000 that is rolled/added to the selling price or to the total amount financed. Is the *negative equity* taxable or not?

What if the vehicle traded in is not owned by the customer (vehicle is still under a lease contract). Do the same answers apply?

4.) Is *customer cash* used as a down payment (Capitalized Cost Reduction) subject to tax?

5.) For lease and purchase. If a Dealer charges a Documentation Fee (a fee charged by the Dealer for the preparation, handling, organizing, etc. of documents) and it is collected upfront in the inception fees and paid upfront by the customer, is the Documentation fee taxed?

6.) If the customer has no cash to pay the inception fees upfront and they are added into the selling price (to the total cap, to the total amount financed) would the Dealer Documentation fee be taxed?

7.) For lease and purchase. If a Lender/Bank charges an Assignment/Acquisition fee (a fee charged by the Lender/Bank for the preparation, handling, organizing, etc. of documents) and it is collected upfront in the inception fees and paid upfront by the customer, is the Assignment/Acquisition fee taxed?

8.) If the customer has no cash to pay the inception fees upfront and they are added into the selling price (to the total cap, to the total amount financed) would the Assignment Acquisition fee be taxed?

9.) For lease and purchase. If Registration fees are collected upfront in the inception fees and paid upfront by the customer, is the Registration fee taxed?

10.) If the customer has no cash to pay the inception fees upfront and they are added into the selling price (to the total cap, to the total amount financed) would the Registration fee be taxed?

11.) For lease and purchase. If a rebate is offered and the customer uses it as a down payment (capitalized cost reduction). Would the rebate be taxed?

12.) If a rebate of \$1500 is given and the upfront fees (inception fees) are \$500, would the full \$1500 rebate be taxed or just the remaining \$1000?

DEPARTMENT'S RESPONSE

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is based on the amount of gross receipts received by the retailer on the sale of that property. "Gross receipts" means all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401.

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. For general information related to conditional sales, please refer to 86 Ill. Adm. Code 130.2010. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax (6.25%) and local occupation taxes, if any. For items that are required to be titled and registered with an agency of this State's government, the entire amount of tax is due "up-front" before the item can be titled or registered. To determine if a local occupation tax is incurred on a sale in a county or municipality, please see ST-25 Sales Tax Rate Reference Material on the Department's Internet website under the heading "Publications."

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not “pass through” their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements. The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

If a manufacturer provides a rebate to the retailer, the amount of that rebate is considered part of the gross receipts received by the retailer and is fully taxable. See 86 Ill. Adm. Code 130.2125. If a retailer offers a discounted price for an item and does not receive any rebate, the entire amount received from the customer would be the retailers' gross receipts for the sale. Rebates from suppliers must be distinguished from situations in which retailers receive discounts from suppliers and pass those discounts on to customers. In the first instance, the full amount received from the customer and the manufacturer will be subject to tax. In the latter instance, the gross receipts subject to tax will include only those amounts received by the retailer from the customer. See subsection (b)(2)(B) of Section 130.2125. You may wish to review the Department's letter ST 05-0121-GIL for some examples.

For further information, you may want to review the Department's publication “Illinois Vehicle Tax Information Guide.” This publication may be viewed on the Department's website.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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